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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,249	02/06/2001	Richard P. Thompson	AERX085CIP	4082
24353	7590	01/27/2005	EXAMINER	
BOZICEVIC, FIELD & FRANCIS LLP 1900 UNIVERSITY AVENUE SUITE 200 EAST PALO ALTO, CA 94303			NAJARIAN, LENA	
			ART UNIT	PAPER NUMBER
			3626	

DATE MAILED: 01/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)	
09/778,249	THOMPSON ET AL.	
Examiner	Art Unit	
Lena Najarian	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 06 February 2001.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-18 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20010522</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 14-15 and 17-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Brown (US 6,168,563 B1).

(A) Referring to claim 14, Brown discloses a method of analyzing data from a glucose monitor, comprising the steps of (col. 4, lines 11-13 of Brown):

connecting a hand-held glucose monitoring device to a computer (Fig. 1 of Brown);

connecting the computer via the internet to a remote web site (col. 28, lines 58-64 of Brown);

analyzing data at the remote web site which data is sent from the glucose monitoring device to the computer and then to the remote web site (col. 4, lines 2-15 & Fig. 12 of Brown);

determining characteristics about the glucose monitoring device based on the data analyzed (col. 6, lines 18-26 of Brown; the Examiner interprets “type” to be a form of “characteristics”).

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(B) Referring to claim 15, Brown discloses sending data from the web site to the computer which data generates an image on a screen connected to the computer which image is specific to a characteristic of the glucose monitoring device (col. 28, lines 58-64 and col. 12, line 63 – col. 13, line 2 of Brown; the Examiner interprets “graphical representation” to be a form of “image”).

(C) Referring to claim 17, Brown discloses electronically downloading information from the glucose monitoring device to the computer (col. 7, line 67 – col. 8, line 14 of Brown); sending the information from the computer to the web site (col. 28, lines 58-64 of Brown).

(D) Referring to claim 18, Brown discloses analyzing the information at the web site (col. 28, lines 58-64 of Brown); and sending signals to the computer in order to generate an informational image on the screen based on information analyzed (col. 7, lines 59-67 of Brown).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-4 and 6-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Surwit et al. (6,024,699) in view of Brown (US 6,168,563 B1).

(A) Referring to claim 1, Surwit discloses a computer system which implements a data receptor form on a screen which is accessible to a community of users, a method of analyzing data on glucose levels, the method comprising the computer implemented steps of (Fig. 1 and col. 8, lines 18-20 of Surwit):

- (a) providing user access to a community of users (col. 6, lines 36-39 of Surwit; the Examiner interprets "Internet or an Intranet" to be a form of "community");
- (b) generating a screen for a user access wherein the screen prompts the user to manually enter data (col. 7, lines 58-60 of Surwit);
- (c) obtaining data manually entered as prompted (col. 8, lines 7-9 of Surwit);
- (e) analyzing the data from the monitoring device and data manually entered; and (f) producing a result based on the analysis (col. 7, lines 32-35 and col. 2, lines 49-52; the Examiner interprets "to identify medical conditions requiring medical attention" to be a form of "result").

Surwit does not disclose (d) receiving data from a glucose monitoring device of the user wherein a system which receives the data from the glucose monitor comprises a program which recognizes data downloaded from a plurality of different types of glucose monitoring devices.

Brown discloses (d) receiving data from a glucose monitoring device of the user wherein a system which receives the data from the glucose monitor comprises a program which recognizes data downloaded from a plurality of different types of glucose monitoring devices (col. 6, lines 18-26 of Brown; the Examiner interprets "particular application" to be a form of "types").

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Brown within Surwit. The motivation for doing so would have been to provide a system that is easily adaptable (col. 6, lines 18-26 of Brown).

(B) Referring to claim 2, Surwit discloses wherein the user access is provided by means of world wide web access (col. 6, lines 36-39 & Fig. 1, item 17 of Surwit; the Examiner interprets "Internet" to be a form of "world wide web access").

(C) Referring to claim 3, Surwit discloses wherein the system is a browser-based system (col. 8, lines 32-35 of Surwit; the Examiner interprets "menu-driven" to be a form of "browser-based").

(D) Referring to claim 4, Surwit discloses wherein the system is a software-based system (col. 8, lines 37-46 of Surwit).

(E) Referring to claim 6, Surwit discloses sending the result of the analysis to the user (col. 7, lines 5-10 of Surwit; the Examiner interprets "patient" to be a form of "user").

(F) Referring to claim 7, Surwit discloses sending the result of the analysis to a caregiver (col. 3, lines 1-5 of Surwit).

(G) Referring to claim 8, Surwit discloses repeating (a), (b), (c), (d) and (e) a plurality of times over a period of days; and storing data entered manually and data received from the user's glucose monitoring device (col. 2, lines 39-49 & col. 12, lines 48-55 of Surwit; the Examiner interprets "every 3 days" to be a form of "period of days").

(H) Referring to claim 9, Surwit discloses plotting data received from the user over a period of days thereby creating a graph from the data (Fig. 9 of Surwit; the Examiner interprets "chart" to be a form of "graph").

(I) Referring to claim 10, Surwit discloses comparing data manually entered against the graph in a manner which allows for a visual representation of events affecting the user's glucose level (col. 8, lines 27-32, Fig. 9A, and Fig. 10A of Surwit; the Examiner interprets "health status, diet, exercise, and insulin taken" to be forms of "events affecting the user's glucose level").

(J) Referring to claim 11, Surwit discloses wherein the manually entered data compared against the graph are data relating to meals eaten by the user (Fig. 9 of Surwit; the Examiner interprets "breakfast" to be a form of "meals").

(K) Referring to claim 12, Surwit discloses wherein the manually entered data compared against the graph are data relating to medication administered by the user (col. 6, lines 49-61 of Surwit).

(L) Referring to claim 13, Surwit does not disclose wherein the manually entered data compared against the graph are data relating to user symptoms.

Brown discloses wherein the manually entered data compared against the graph are data relating to user symptoms (col. 2, lines 13-21 & Fig. 21 of Brown).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Brown within Surwit. The motivation for doing so would have been to visually display data received from the patient (col. 29, lines 17-22 of Brown).

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5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Surwit et al. (6,024,699) in view of Brown (US 6,168,563 B1), as applied to claim 1 above, and further in view of Pronovost et al. (US-2001/0023324 A1).

(A) Referring to claim 5, Surwit discloses wherein the manually entered data comprises data selected from the group consisting of: user name, age, sex, weight, current medications, medication dosages, time of meals, food eaten at meals, symptoms, and caregiver name (Figs. 2, 8-9, 11, and 14 of Surwit).

Surwit and Brown do not disclose data related to height and race.

Pronovost discloses height and race data (para. 198 and para. 199).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Pronovost within Surwit and Brown. The motivation for doing so would have been to include additional demographic data for comparison (para. 194, lines 18-20 of Pronovost).

6. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 6,168,563 B1), as applied to claims 14 and 15 above, and further in view of Phillips et al. (4,935,346).

(A) Referring to claim 16, Brown does not disclose wherein the characteristic of the glucose monitoring device is specific to a commercial brand of glucose monitoring device.

Phillips discloses wherein the characteristic of the glucose monitoring device is specific to a commercial brand of glucose monitoring device (Table 7 at col. 18 of

Phillips; the Examiner interprets "GlucoScan Plus" and "Accu-Check bG" to be forms of "commercial brand").

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Phillips within Brown. The motivation for doing so would have been to better manage disease conditions based on readily available and commonly utilized equipment (col. 1, lines 34-44 of Phillips).

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lena Najarian whose telephone number is (703) 305-0260. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on (703) 305-9588. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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